

Lee Siew Lin v Oh Choon
[2013] SGHC 25

Case Number : Divorce Transferred No 5661 of 2010
Decision Date : 28 January 2013
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Christopher Teh (Teh Yip Wong & Tan) for the plaintiff; Tan Aye Cheng (A C Shone & Co) for the defendant.
Parties : Lee Siew Lin — Oh Choon

Family Law – Matrimonial assets – Division

Family Law – Maintenance – Wife

28 January 2013

Chan Seng Onn J:

1 This judgment deals with the claim of Lee Siew Lin (“the wife”) to a share in the matrimonial assets and maintenance for herself post-divorce. After hearing the parties, I essentially awarded 74% of the matrimonial assets to Oh Choon (“the husband”) and 26% to the wife. This division was effected by my order to the husband to transfer his share in 15A Kalidasa Avenue, Singapore 789394 (“the matrimonial home”) to the wife within 6 months. The husband was allowed to retain his share in 63 Thong Soon Green, Singapore 787369 (“63 Thong Soon Green”). In addition, the parties were allowed to retain the moneys in their respective bank and CPF accounts and other assets in their own names.

2 With respect to the claim for maintenance, I awarded a lump sum of \$5,000 to the wife.

3 The husband has appealed against my decision regarding the transfer of the matrimonial home to the wife. I now set out my reasons.

Introduction

4 The parties were married on 2 August 1993. The husband was a businessman. He has recently retired from his catering business while the wife currently works as a laundry assistant. The husband moved out of the matrimonial home in June 1999 and the wife commenced divorce proceedings in November 2010. Interim judgment for divorce (“the decree *nisi*”) was granted on 20 October 2011 on the basis that the parties had lived apart for a continuous period of at least 4 years. The parties have no children.

5 After the husband moved out of the matrimonial home in June 1999, he visited his wife monthly to give her \$1,200 in cash as maintenance until October 2010. From November 2010 until April 2011, he paid her the maintenance money via cheques.

Disputed matrimonial assets

6 The parties held opposing views on two specific issues relating to the composition of matrimonial assets:

- (a) Whether 63 Thong Soon Green, Singapore 787369 formed part of the matrimonial assets; and
- (b) Whether Block 365 Clementi Avenue 2, #04-493, Singapore 120365 formed part of the matrimonial assets.

7 The wife's position was that both properties should form part of the matrimonial assets. Unsurprisingly, the husband asserted that neither property should be regarded as a matrimonial asset.

The operative date for determination of the matrimonial assets ("the operative date")

8 Section 112(10)(b) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter") defines the term matrimonial asset as an "asset of any nature acquired during the marriage by one party or both parties to the marriage".

9 As observed by the Court of Appeal in *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 ("*Yeo*") at [32], there is no "fixed date for the purposes of determining what assets would fall within the pool of matrimonial assets and what would not". The Court of Appeal in *Yeo* at [39] then suggested four possible dates which may be adopted as the operative date:

- (a) The date of separation;
- (b) The date on which the petition of divorce is filed;
- (c) The date on which a decree *nisi* is granted; or
- (d) The date of hearing of ancillary matters.

10 The Court of Appeal in *Yeo* went on to note (also at [39]) that "of the four possible cut-off dates, it seems to us that generally speaking *it would be sensible to apply either the date of the decree nisi or the date of the hearing of the ancillary matters*. Much would depend on the fact situation." [emphasis added].

11 The husband's case was that the operative date should be the date of separation (*i.e.* June 1999). He asserted that after leaving the matrimonial home, he faced financial difficulties and thus there was no common pool of monies which he could have used to purchase the properties.

12 As I understood it, the husband was basically contending that at the time he left the matrimonial home in June 1999, he had hardly any money. He worked hard subsequently and accumulated his savings over a period of more than 10 years before he could afford to purchase 63 Thong Soon Green in April 2010. Since this property was bought with money he accumulated only after the date of separation, this property should not form part of the matrimonial assets and the operative date for determination of the pool of matrimonial assets should therefore be the date of

separation and not any later date. Should the operative date be the date on which the petition of divorce was filed (*i.e.* November 2010) or the date on which the decree *nisi* was granted (*i.e.* 20 October 2011), then all his efforts in accumulating assets for himself would have gone into the pool of matrimonial assets for division and would not be exclusively for his own benefit. That would seem inequitable and detrimental to his interest.

13 On the facts of this case, the parties appeared to be contented with their state of separation for more than 10 years without either party taking any active steps to end the marriage by commencing divorce proceedings early and settling their financial affairs quickly by having the ancillary matters expeditiously dealt with. There were also no steps taken at any time during the long period of separation to make clear to each other that the pool of matrimonial assets would crystallise at the date of separation, and thereafter any accumulation of assets would accrue to each party individually and ought not to be taken as part of the matrimonial assets henceforth. Without clear evidence of such an agreed arrangement or common understanding between the parties, I was not prepared to adopt the date of separation as the operative date. Any accumulation of assets by the efforts of either party during the separation would continue to fall into the pool of matrimonial assets. The parties would be taken to have continued accumulating matrimonial assets jointly on the basis that the marriage was still legally subsisting though they were separated. In the present circumstances, it would be sensible to adopt the date of the decree *nisi* (*i.e.* 20 October 2011) as the operative date. In my view, adoption of this operative date would not bring about an unjust outcome.

63 Thong Soon Green, Singapore 787369

14 Accordingly, I decided that 63 Thong Soon Green, a private terrace house, was part of the matrimonial assets because the property was purchased by the husband on 14 April 2010, before the operative date. The moneys used by him to finance the purchase of this property in his own name would have originated from the matrimonial moneys accumulated before the operative date.

Block 365 Clementi Avenue 2, #04-493, Singapore 120365

15 I decided that the flat did not form part of the matrimonial assets. The flat was held in one Liew Kwai Lin's sole name. Despite the wife's allegations that the husband paid for the flat, there was no evidence before me to support her allegations.

Division of matrimonial assets

The law

16 The duty of the court in the division of matrimonial assets is to consider all the circumstances of the case including the following factors as provided in s 112(2) of the Charter:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of

either party;

(e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;

(f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;

(g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and

(h) the matters referred to in s 114(1) so far as they are relevant.

17 The above factors are non-exhaustive and a wide discretion is conferred upon the court in order to achieve a just and equitable division of the matrimonial assets (see *Tan Hwee Lee v Tan Cheng Guan and another appeal and another matter* [2012] 4 SLR 785 at [41] and *Yeo* at [76]).

18 A broad brush approach which takes into account both financial and non-financial contributions should be used in achieving a just and equitable division of matrimonial assets (*Yeo* at [78]; *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*"). However, this does not mean that the court will meticulously investigate every minute sum each party has paid or incurred (*NK v NL* at [26]; *Yeo* at [78]). Ultimately, the broad brush approach is "about feel and the court's sense of justice" (*Yeo* at [76] and [81]).

Factors in the division of matrimonial assets

19 After considering the evidence presented before me, I decided on a 76:24 division of the matrimonial assets for the following reasons.

The length of the marriage

20 The parties had been married for 18 years although the husband moved out after six years of marriage. After the husband moved out, the parties still maintained contact through the husband's monthly visits to the matrimonial home and his provision of \$1,200 in monthly maintenance to his wife.

21 Previous cases have established that "in a short and childless marriage, the division of matrimonial assets will usually be in accordance with the parties' direct financial contributions as non-financial contributions will be minimal" (*Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729 ("*Ong*") at [28]; *Wang Shi Huah Karen v Wong King Cheung Kevin* [1992] 2 SLR(R) 172 ("*Wang*") at [15]). However, I note that the effective length of the marriages in *Ong* and *Wang* (*viz.* 19 months and one year respectively) were significantly shorter than the present case. Accordingly, I gave due consideration to both the financial and non-financial contributions of the parties in the present case.

Financial contributions

22 It was common ground between the parties that the husband had made significant financial contributions towards the marriage. He paid for the cost of purchasing, renovating, furnishing and maintaining the matrimonial home. He also paid for the utilities until February 2012 and had given the wife a monthly maintenance of \$1,200 until April 2011. In contrast, the wife had paid for some

household and grocery expenses during the marriage.

23 The parties also did not dispute the fact that the husband had been drawing a significantly higher income than the wife. The wife earned \$900 a month as a laundry assistant while the husband had retired from his catering business. The following figures from the husband's Notice of Assessment provide a general indication of the husband's level of income in the past:

Year of Assessment	Total Income
2009	\$62,509.00
2010	\$67,909.00
2011	\$74,192.00

Non-financial contributions

24 The wife claimed that she frequently assisted in the commercial kitchen of the husband's catering business while the husband disputed the frequency of her assistance. I decided on a balance of probabilities that the wife had provided substantial assistance to the husband's catering business. Even though the couple had no children, I did note that the wife had carried out household chores and had looked after the matrimonial home.

The Division

25 Having considered the above factors, I adopted a broad brush approach and awarded the husband effectively 74% of the matrimonial assets and the wife 26% of the matrimonial assets. In my view, this division was on the whole just and equitable. The assets were ordered to be divided as follows:

Wife	Value	Husband	Value
Matrimonial home	\$640,000.00	63 Thong Soon Green (\$2,480,000 valuation - \$673,650.10 outstanding loan)	\$1,806,349.90
Cash	\$11,764.81	Cash	\$17,302.28
CPF Monies	\$106,890.08	CPF Monies	\$166,325.81
Shares	\$2,310.00	Car (\$179,000 - \$74,073.05)	\$104,926.95
		Insurance Policies	\$39,005.00
Total:	\$760,964.89	Total:	\$2,133,909.80
Division:	26.29%		73.71%

Lump sum maintenance for the wife

26 Bearing in mind the delays experienced by the wife in obtaining maintenance from the husband

and the desire of the retired husband to have a clean break, I awarded a lump sum of \$5,000 as maintenance for the wife, who is still working. This lump sum maintenance would have been significantly higher had the proportion of matrimonial assets given to the wife been any lower than the percentage allocated to her of 26.29% of the total pool of matrimonial assets of \$2,894,874.60, which amounted to \$760,964.89.

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